

REMARKS

Claims 1-17 are pending, and claims 18-80 have been previously cancelled in view of being withdrawn as drawn to non-elected subject matter.

Applicant thanks the Examiner for withdrawal of the prior rejections, under 35 U.S.C. § 103(a) in view of Duffy, and Donini et al., etc., and for indicating that all claims would be allowable if a proper Terminal Disclaimer is submitted.

Applicant acknowledges the Examiner's maintained rejection of claims 1-17, under the judicially-created doctrine of non-statutory double patenting, as being unpatentable over claim 1-16 of applicant's U.S. Patent No. 6,605,432 (the '432 patent). Applicant has attached a Terminal Disclaimer to obviate this issue.

Finally, applicant has filed a Request for Continued Examination to have the attached IDS entered into the record. All the references of the IDS were cited, of record and were previously considered in the underlying parent application (098/497,855; now U.S. 6,604,432), of which the present application is a continuation.

No new matter has been added.

FORMALITIES

Species election. Applicant has previously amended claim 17 in view of the provisional species election of record (*i.e.*, to SEQ ID NO:36), but maintains that recitation of all originally recited SEQ ID NOS is appropriate where independent claim 1 has been determined to be allowable, as is the present case.

Nonstatutory Double Patenting Rejection

The Examiner has rejected claims 1-17, under the judicially-created doctrine of non-statutory double patenting, as being unpatentable over claim 1-16 of applicant's U.S. Patent No. 6,605,432 (the '432 patent).

The Examiner asserts that the conflicting claimed subject matter, while not identical to, is nonetheless not patentably distinct from that claimed in the '432 patent; that is claims 1-16 and 21 of the '432 patent fall entirely within the scope of claims 1-17.

Applicants submit that the present application is commonly owned (ASSIGNEE: Curators of the University of Missouri) with the allegedly conflicting '432 patent, and applicants herein submit a timely Terminal Disclaimer in compliance with 37 C.F.R. 3.73(b) in view of the Examiner's indication of allowable subject matter.

CONCLUSION

In view of the foregoing amendments and remarks, applicant respectfully requests entry of the present amendments, and allowance of all relevant claims as provided herein above. The Examiner is encouraged to phone applicant's attorney, Barry L. Davison, to resolve any outstanding issues.

No new matter has been added.

Respectfully submitted,

Davis Wright Tremaine LLP

Barry L. Davison, Ph.D., J.D.
Attorney for Applicant
Registration No. 47,309

Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
Telephone: 206-628-7621
Facsimile: 206-628-7699